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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,024

12/27/2005

Yossi Gross

SC&C-112US

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EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

06/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/535,024	Applicant(s) GROSS ET AL.	
	Examiner /Scott M. Getzow/	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16,25-48 and 65-80 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16,25-31,34-48,65-72 and 75-80 is/are rejected.
- 7) ☒ Claim(s) 32,33,73 and 74 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/5/07, 1/24/07</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 102

1. Claims 1,2,4-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Ansarinia (6,526,318).

Ansarinia is considered to encompass all of the structure of the above claims. Columns 6 and 7 of the patent teach that a stimulator, including electrodes connected via wire to a pulse generator, can be inserted into the patient to be in the vicinity of the SPG. The manner in which the device is inserted is considered to be intended use, which the device of Ansarinia is capable of performing. Further, column 8 teaches the use of an introducer. Column 12 teaches finding the optimal location for the device inside the patient. Further, the device of Ansarinia is capable of being fixed to an area of the hard palate if desired.

Claim Rejections - 35 USC § 103

2. Claims 25-31, 34-39, 43, 45, 48, 65-72, 75-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansarinia (6,526,318).

To pass the device of Ansarinia thru the greater palatine foramen, as set forth in claim 25, is considered to be obvious since the ordinary artisan would be well aware of the most direct and effective route to the desired stimulation site. Further, wrapping the electrode around a nerve is well known in the art to properly secure the electrode in certain circumstances. The ordinary artisan would be expected to know the various ways in which an electrode can be secured to nerves to have the best tissue/electrode contact possible.

3. Claims 3, 40, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansarinia (6,526,318) in view of Ahn (2002/0077687).

Par. 55 of Ahn teaches the use of a marker to indicate the depth of the instrument to be inserted into the patient. To use a marker with the device of Ansarinia would have been obvious in order to facilitate the implantation of the device into the patient.

4. Claims 41,42,46,47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ansarinia (6,526,318) in view of Guyuron (2004/0138097).

Guyuron teaches the use of a periosteal elevator. Such a device is common in the art, and would have been obvious to use with the device of Ansarinia to facilitate the introduction of the device into the patient.

5. Claims 32,33,73,74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including

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all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Scott M. Getzow/ whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/
Primary Examiner
Art Unit 3762

SMG

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